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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Balkrishna S. Jadhav

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07/16/2004

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EXAMINER

ISABELLA, DAVID J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/774,516	Applicant(s) JADHAV, BALKRISHNA S.	
	Examiner DAVID J ISABELLA	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 and 46-75 is/are pending in the application.
- 4a) Of the above claim(s) 54-58, 61-65 and 73-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-14, 46-53, 59, 60 and 66-71 is/are rejected.
- 7) ☒ Claim(s) 72 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Election/Restrictions

Previous newly submitted claims 61-65 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a non-elected species as per applicant's response dated November 7, 2002. Accordingly, all claims that are to be considered in the instant application should be related to applicant's election of the species related to parallel fibers with cross-over orientations. Examiner's position with respect to the various species is further supported by applicant's arguments, in paper dated 6/28/2004, that the embodiment of a fenestrated wall structure is different from openings between monofilaments.

Accordingly, previously presented claims 54-58 and newly added claims 73-75 which depend from the non-elected claims 61-65 are withdrawn from consideration. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54-58, 61-65, 73-75 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Currently claims 8-14, 46-53, 59, 60, 66-72 are pending for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-14,46-53,59,60,66-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper, et al in view of Stinson (6245103) and Kaplan et al (5320624).

Cooper, et al discloses an absorbable polymer blends useful to manufacture medical devices including stents (see column 5, lines 63-67 and column 6, lines 1-27. The polymer blends include at least two homopolymers including poly-L-lactide and poly-epsilon-caprolactone (see column 1, lines 27-39). Kaplan et al discloses the use of a blend of homopolymers in the fabrication of surgical devices. While Kaplan et al fails to specifically disclose "a stent" as a surgical device, stents along with other medical devices including fasteners, staples, clips, pins screws and the likes have been fabricated from homopolymer blends as taught by Cooper. While Cooper, et al discloses preferred blends and ratios, Cooper recognizes that the art of polymer mixture allows for customizing the dimensional stability, shape retention, palpability, strength, stiffness and breaking strength of the intended medical device to be manufacture. If not inherent in Cooper, et al, to fabricate a stent from the blend of homopolymers and ratios

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as taught by Kaplan would have been obvious to one with ordinary skill in the art based on manufacturing and surgical considerations. Cooper et al is more specifically directed to the general use for the polymer blends. Specifics to the structure, dimensions and mechanical characteristics of helically wound stents is taught by Stinson. (Note, the diameter of the stent is disclosed by Stinson, see Table 7.) To fabricate a helically wound stent from the polymers blend as disclosed by Cooper et al as modified by Kaplan et al would have been obvious to one with ordinary skill in the art based upon the desired stent characteristics that are required to meet the in vivo demands of the particular patient.

Claim 47, see braided tubes as shown in the figures of Stinson.

Claim 48, see column 3, lines 1-40 of Kaplan.

Claim 49, from table 7, see example 30 of Stinson.

Claim 50, the ratio as disclosed by applicant's specification falls within the same ratios as disclosed by Kaplan. Therefore the modulus of the Kaplan's device as modified by Stinson would inherently fall within the range as claimed by applicant.

Claim 51, see range as disclosed by Stinson.

Claim 52, see table 7 of Stinson.

Claim 53, see crossing angles as taught by Stinson (column 10).

Claim 59, the stent of Kaplan has the size and physical characteristics as claimed by applicant and would inherently suffice (ie meet the requirements for use in the urethra) as a urethral stent.

Claim 60, see ratio blend as disclosed by Kaplan.

Claims 8-14 are essentially identical to the corresponding claims supra that were rejection on the teachings of Stinson. (See figure 2 and column 24.)

Claim 66, see column 1, lines 27 of Cooper et al.

Claim 67, see columns 4 and 5 of Cooper et al.

Claims 69-71, see column 3, lines 16+ of Cooper et al.

Allowable Subject Matter

Claim 72 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the art fails to show the combination of a bioresorbable stent and a blend of homopolymers. This argument is moot in light of the new ground of rejection as applied supra. Clearly the list of Kaplan would include "like" medical devices including stents as disclosed by Cooper, et al depending on the specifics regarding the deployment of the device to correct the particular problems of the patient including restenosis.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DAVID J ISABELLA** whose telephone number is 703-308-3060. The examiner can normally be reached on **MONDAY-FRIDAY**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **CORRINE MCDERMOTT** can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA
Primary Examiner
Art Unit 3738

DJI
APRIL 18, 2004